698; *Borradaile* v. *Nelson*, 14 C. B. 655; but see *Bailey's Case*, 1 Johns. Cas. 32; *Varian* v. *Ogilvie*, 3 Johns. 450; *Boulton* v. *Hubbard*, 6 Id. 332; *Walsh* v. *Sackrider*, 7 Id. 537; *Foster* v. *Garnsey*, 13 Id. 465; *Wood* v. *Gibson*, 1 Cow. 597; *Draper* v. *Beasley*, 8 U. C. Q. B. 260.

JOHN H. STEWART.

Supreme Court of Errors of Connecticut.

FRANK F. COOK *v.* LUCIUS M. JOHNSON.

The plaintiff for a sufficient consideration bought of the defendant his business as a dentist, and the latter executed a contract not to practice dentistry "within a radius of ten miles of Litchfield." The town of Litchfield has an extensive territory and an irregular outline, and contains the village of Litchfield, in which the defendant dwelt and had his office at the time, and where the contract was drawn and executed. *Held*, that the above expression meant "within ten miles of the centre of the village of Litchfield."

And held, that the contract was not void in not fixing a period within which the defendant was not to practise dentistry within those limits.

It seems that where such a contract is reasonable when made, subsequent circumstances, such as the covenantee's ceasing to do business, do not affect its operation.

PETITION for an injunction against the practise of dentistry by the respondent. Decree for petitioner and motion for a new trial by the respondent.

H. B. Graves, in support of the motion.

C. B. Andrews and *E. B. Kellogg*, contra.

The opinion of the court was delivered by

LOOMIS, J.—The questions presented by the respondent's motion for a new trial depend on the validity and construction of the following contract:

"Litchfield, Connecticut, April 2d 1874.

I this day sell and convey, to Frank F. Cook, all the furniture and fixtures in the rooms over Dr. Beckwith's drug store; also my good-will; and do agree and bind myself not to practise dentistry within a radius of ten miles of said Litchfield. And for the consideration above named have this day received one hundred dollars from Frank F. Cook's hand.

L. M. JOHNSON."

As this belongs to the class of contracts in restraint of trade, three requisites are essential to its validity. 1st. It must be

partial, or restricted in its operation in respect either to time or place. 2d. It must be on some good consideration. 3d. It must be reasonable, that is, it should afford only a fair protection to the interests of the party in whose favor it is made, and must not be so large in its operation as to interfere with the interests of the public.

The motion does not disclose that it was claimed in the court below that the contract was lacking in any of these elements, but only that it was too indefinite and uncertain in its language to be enforced. The respondent admits the making of the contract, and full performance on the part of the petitioner, but concedes that he has paid no attention to it whatever, except to keep the money paid under it. This is not very creditable, to say the least, and the excuse given does not at all relieve him in a moral point of view. He says, in effect, that inasmuch as he did not understand, by the language which he used in the contract, where the circle with its ten-mile radius would be drawn, he will locate within the town of Litchfield, where he can do the other party the most injury, and appropriate to himself the good-will of the business he had sold, knowing absolutely such conduct to be contrary even to his own understanding of the contract. Such a position might well excuse a court of equity from giving any construction to the contract merely for his future guidance.

But he says that he stands simply on his legal rights, and he insists that the contract by the rules of law is too uncertain and indefinite, both as to territory and time, to be binding. This question is involved in the motion for a new trial, and calls for a decision; and with a view to prevent future litigation between the parties, we will discuss it briefly.

The counsel for the respondent ask in their brief, "How can the court determine, under this contract, the territory from which the respondent is excluded from practising dentistry by the provision '*within a radius of ten miles from Litchfield?*' At what point is the radius to be taken? From the centre of the town of Litchfield? Or is it to be taken from the extreme boundaries of the town?" The construction suggested by the last interrogatory is manifestly unnatural and unreasonable. The large extent and irregularity of the boundary lines of the town, would extend the prohibited territory much further from the respondent's former place of business at certain points than at others, without any

reason for it founded on the extent of the good-will of the business in reference to which it is to be presumed the limits were prescribed. And besides, the term "radius," which means "a right line drawn or extending from the centre of a circle to its periphery" is wholly inapplicable to such a construction.

But in making such a contract the parties would naturally take their stand at the place where the business to be sold had been carried on, and would fix the utmost limits of the territory at equal distance from that point in every direction, and as far at least as they supposed the good-will might attract customers. Now the contract is dated at "Litchfield," where the post-office of that name was located, and the ten miles are to be computed from "*said* Litchfield," referring to the place where it was dated. It is also to be remarked that the precise point in the village of Litchfield, where the business referred to had been carried on by the respondent, is mentioned, namely, "in the rooms over Dr. Beckwith's drug store."

Now if we put ourselves in the position of the parties it would seem that the language which they used is capable of very easy and definite application, and thus construed the contract means ten miles in every direction from the centre of the village of Litchfield.

The only remaining inquiry is, whether any more definite limitation, as to time, is required.

The contract is silent in respect to the time of its duration. But there is a well-settled distinction between a general restriction as to *place* and a general restriction as to *time*. The mere fact that the duration of the restriction as to time is indefinite or perpetual, will not of itself avoid the contract if it is limited as to place, and is reasonable and proper in all other respects: *Hitchcock* v. *Coker*, 6 Ad. & E. 447; *Bun* v. *Guy*, 4 East 190; *Chesman* v. *Nainby*, 2 Strange 739; s. c. 2 Ld. Raym. 1456; *Wilkins* v. *Evans*, 3 You. & Jer. 318; *Mallen* v. *May*, 11 Mees. & Wels. 652; *Hastings* v. *Whitley*, 2 Exch. 611; Story on Sales, 1st ed., sect. 493; *Pierce* v. *Woodward*, 6 Pick. 206; *Bowser* v. *Bliss*, 7 Blackf. 344.

It is said that the petitioner may cease to practise dentistry, and that in such case the respondent ought not to remain under a perpetual injunction. The court, in its discretion, might in the decree have anticipated such a contingency and provided for it, but the decree is not invalid on account of such omission, any more than the contract is.

The rule as to the contract is, that if it is reasonable when made, subsequent circumstances, such as the fact of the covenantee ceasing business, so as no longer to need the protection, do not affect its operation: *Elves* v. *Crofts*, 10 C. B. 241.

A new trial is not advised.

Court of Appeals of Kentucky.

ORMSBY v. THE CITY OF LOUISVILLE.

Sunday not being a judicial day the publication of a city ordinance upon that day is not a valid compliance with the law requiring publication.

But where a publication is required by law for a certain period, as *e. g.* thirty days, the intervening Sundays will be counted in the enumeration, although no publication be made on them.

Where the charter of a city requires that "all ordinances shall be published" in a specified manner "before they are enforced," such publication is a condition precedent to the legal enforcement of an ordinance.

In pleading at common law the facts must be given showing compliance with a condition precedent, or excusing its performance; a general averment of compliance, is only an averment of a legal conclusion and therefore insufficient.

Interest is not allowable upon taxes by way of damages, and if any penalty or percentage is allowed by law, the party claiming it should show affirmatively a compliance with all the requirements of the law.

A description of property upon a tax-list need not be as full or precise as in a deed; it is sufficient if a person of ordinary capacity may understand what is meant by it.

APPEAL from the Louisville Chancery Court. Bill by the city of Louisville, under Act of March 3d 1876, to assert and enforce a lien for municipal taxes.

The opinion of the court was delivered by

HARGIS, J.—The charter and its amendments of the city of Louisville provide that all ordinances "*shall be published*" once in at least two papers of the largest circulation, "*before they are enforced.*" The annual levy ordinances for taxation are required to be adopted by the city council before taxes can be legally collected: *Boone* v. *Gleason*, decided in this court in 1878, not yet reported. And we think the charter and amendments above referred to, make the publication of such ordinances a necessary pre-requisite to their enforcement.

We have carefully investigated the authorities cited on all the questions presented for our consideration, and without referring to